IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1345 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRABHABEN V. TRIVEDI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1345 of 1992

MR CV PRAJAPATI for Petitioner No. 1

MS PRAGNA V PANDYA for Petitioner No. 1

MR. N.D. GOHIL, LD. AGP for Respondent No. 1

RULE SERVED for Respondent No. 2-3

MR JV MEHTA for Respondent No. 4-6

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 03/09/2004

ORAL JUDGEMENT

1. The petitioner was working as Assistant Primary Teacher since 16-12-1978 in respondent No.6 school, which is administered by respondent No.4 Trust. It is the case of the petitioner that she came to be terminated from service vide order dated 1-6-1987, therefore petitioner filed application No. 40 of 1987 before Gujarat Primary Education Tribunal, at Ahmedabad. The school management made a statement before the tribunal that the petitioner will not be terminated without following procedure laid down in law. However said application was stayed suo motu by the Tribunal. The petitioner therefore approached this Court by filing Special civil Application No. 7438 of 1990 inter alia praying the petitioner be allowed to file fresh application before the Tribunal on the same cause of actin as in Application No.40 of 1987.

2.1 Learned advocate for the petitioner submitted that, in 1990 petitioner filed another application no. 225 of 1990 before the Tribunal. The Tribunal by interim order directed the respondents to pay salary from June 1990.

2.2 Thereafter as the petitioner apprehended that the school management may close down the school petitioner filed Special Civil Application no. 3904 of 1991 and this Court granted ad interim relief directing the school management not to close down the school without following due procedure of law.

2.3 It is submitted that the school management by letter dated 14-2-1992 informed the petitioner that the Education Department had given permission to close down the school, which has been granted without giving opportunity of being heard to the petitioner. Being aggrieved petitioner has preferred the present petition.

3.1 Heard the learned advocate for the parties. It appears that the Secretary, Education Department of the State Government while considering the matter has not properly examined the case in light of scope and ambit of closure of classes. Clause 5 which is relevant for the purpose of this petition reads as under :-

" No management of recognized private primary school shall effect any reduction in total number of classes in its school or close down the school without he prior permission in writing of the Government. For this purpose, the management shall have to make an application to the authorised officer atleast six months before the

date from which it intends to reduce the number of classes or close down the school. On receipt of such application, authorised officer shall hear the management and forward such application with his remarks to Government through the Director of Primary Education. The Government may in such manner as may be deemed necessary make such further inquiry as it may appear to it to be necessary and shall decide whether the application should be granted or refused either in whole or in part. "

3.2 It is true that the management which has opened the school has power to close the school in normal circumstances subject to compliance of procedure provided under law. When the school is opened relevant provisions of statute are required to be followed. Similarly, when the closure is to be effected, such relevant provisions will have to be followed. Therefore, with a view to see that there may not be any malafide closure or closure with an ulterior motive and as a consequence thereof it may not result into injustice to students and/or to teachers, the aforesaid provisions of Clause 5 have been provided under the Rules.

4.1 Keeping in view the aforesaid observations, if the order of the Additional Secretary of the State Government is examined it appears that he has not at all considered the crucial aspects of the case as to whether the closure is sought to be effected with malafide purpose or not. This was required to be examined because it was the case of the petitioner - teacher that the same was malafide, particularly when the school management had given a statement before the Tribunal that the service of the petitioner will be terminated only after following due process of law. Therefore, in my view the said fact required to be considered by the Additional Secretary while passing the order for permitting closure or otherwise.

4.2 It is pertinent to note that though the petition is of 1992 the respondents have not filed affidavit in reply to controvert the say of the petitioner. Apart from this, when this petition came to be admitted, it was ordered to be heard with Special Civil Application No. 3322 of 1990. Special Civil Application No. 3322 of 1990 came to be decided by order dated 12-4-2001 along with Special Civil Application No. 3575 of 1990, however this petition remained undecided.

5.1 In the above view of the matter, this petition is

allowed. The order dated 14-2-1992 passed by the Additional Secretary is quashed and set aside with the directions to the Additional Secretary, Education Department, State of Gujarat to reconsider the matter in the light of the observations made by this Court hereinabove and to pass appropriate order in accordance with law, after giving opportunity of hearing to the respondents- School Management as well as the petitioner - teacher. The Additional Secretary shall pass the order as indicated hereinabove within a period of three moths from the date of receipt of writ of this order. Rule made absolute. No order as to costs.

Dt: 3-9-2004 (K.S. JHAVERI, J)

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